IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7331 OF 2004

Smt.Sunita Rajaram Bhamare — Petitioner

versus

The President/Secretary,
Maharashtra Vidya Prasarak
Mandal and others — Respondents

Ms.K.A.Bhatia, adv. for petitioner.

Mr.Amey Tamhane, adv. for respondent no.1.

Mr.N.P.Deshpande, AGP for respondents 4 to 6.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, J.

DATE : 13th December 2004

PC :

1. Rule. Respondents 1, 3 to 6 waive service. Respondents 1 and 2 are served but none appears for them. Returnable forthwith by consent of appearing parties.

2. The petitioner is aggrieved and dissatisfied by an order passed by Education Officer (Secondary), Zilla Parishad, Nashik on 2nd April 2004 refusing to approve her appointment and at

the same time directing the management to pay her salary for the period she rendered services. It is not necessary to make a detailed reference to all facts and circumstances because it is not disputed that a representation was made by the petitioner on 18th July 2003 requesting respondents 3 to 5 to look into her grievances of non payment of salary and further non grant of approval to her services in respondent no.2 school. It was her grievance that approval should be granted from the date of her first appointment i.e. 1st July 1999 onwards. She was praying for a direction by this representation to the management to pay arrears of salary as well.

3. Since the aforesaid representation was not considered, a writ petition being Writ Petition No.9071 of 2003 was instituted by the petitioner in this Court. The said writ petition came to be placed before a Division Bench of this Court and after hearing parties this Court made following order :-

"CORAM : H.L.GOKHALE &
F.I.REBELLO, JJ.

DATED : JANUARY 12, 2004

P.C.

The petitioner has made representation through her advocate dated 18.7.2003 addressed to the Education Officer, Zilla Parishad, Nashik. The grievance is with respect to the approval of the services of the petitioner from 2000 onwards and then appropriate pay scale. All that the Petitioner expects is that the representation ought to be decided at the earliest. We direct Respondent No.4 Education Officer to decide this representation within six weeks from the date of receipt of this order. Petition disposed of accordingly.

Respondent No.4 will act on authenticated copy of this order."

4. In pursuance of directions of this Court, the representation was considered by respondent no.4.

5. Aggrieved and dissatisfied with the order dated 2nd April 2004 passed by the Education Officer refusing to grant approval to the services of petitioner, the petitioner has approached this Court again.

6. We have heard Ms.Bhatia for petitioner, Mr.Tamhane for respondent no.1 and learned AGP appearing for respondents 3 to 6.

7. Our attention has been invited by the learned AGP to the affidavit filed by the Deputy Education Officer (Secondary), Zilla Parishad, Nashik on 23rd November 2004 in answer to this petition. It is contended therein that

petitioner is M.A; B.P.Ed. but she came to be appointed on the scale of Under Graduate D.Ed. category. Our attention was invited to the fact that for the academic year 2001-02 there is a ratio of 25% for appointment of trained graduates. There was no post of trained teacher vacant at the relevant time. Therefore, appointment of petitioner was against GR dated 17th January 2001. It is also pointed out that petitioner was appointed on D.Ed. scale during academic year 1999-2000 when there was no vacancy of D.Ed. scale. It is, therefore, contended that the Education Officer was justified in coming to the conclusion that the appointment of petitioner cannot be approved. It was also contended vehemently that the management has not taken into account the policy of reservation while making appointments. Instances of backlog in an aided institution have been set out in the impugned order. Similarly, it was pointed out that insofar as other aided schools of this management are concerned, there is a backlog of 12 posts, details of which are placed on record in the aforesaid affidavit. Thereafter, our attention was invited to the fact that in the unaided schools of the institution in question not a single backward class person has been

appointed. It is contended that the petitioner's appointment being contrary to GR dated 17th January 2001 and on account of the aforesaid factual position about the backlog, the petitioner's appointment cannot be approved and the earlier order dated 5th January 2002 is thus rightly confirmed. Consequently, this is not a fit case for exercising our writ jurisdiction.

8. With the assistance of learned counsel appearing for both sides we have gone through the relevant orders as well as communications. Our attention has been invited by Ms.Bhatia appearing for petitioner to the fact that the petitioner's case is fully covered by the ratio of 25% as per Rule 66 of Secondary School Code. She points out that the petitioner was eligible and qualified and has actually worked in the institution from 1st July 1999. She points out that a junior teacher appointed on part time basis in the year 1999 has been granted approval by the authorities. Ms.Bhatia invites our attention to the Maharashtra Employees of Private Schools Rules (hereinafter referred to as "MEPS Rules" for the sake of brevity) and submits that the appointment order dated 21st June 1999 clearly shows that the petitioner was appointed on 2

years probation in clear and permanent vacancy by respondent no.1. After completion of two years probation she became deemed permanent employee of respondent no.2 school as per Section 5(2) of MEPS Act and Rules. She invites our attention to the fact that this Court has delivered a judgement on 6th May 2004 in Writ Petition No.4632 of 1999 and connected matters quashing and setting aside Circular dated 17th January 2001. In her submission, therefore, she is entitled to the reliefs claim in this petition.

9. Learned counsel appearing for State was unable to point out any rule or other provision making reservation policy applicable to unaided institutions or unaided sections of respondent no.1 management. Consequently, the reason of backlog mentioned in the year dated 2nd April 2004 cannot be sustained.

10. Insofar as Circular dated 17th January 2001 is concerned, the order of Division Bench referred to above makes it clear that one post can be filled in by teacher who has graduate qualifications along with D.Ed. and/or B.Ed.. The Division Bench relied upon an earlier order delivered on 10th September 2002 to this effect.

In the light of this position, it was held that the interpretation of the Government Circular enables appointments of persons like petitioner before us. It is held that they are duly qualified and eligible. They are entitled to receive their salaries as trained teachers from the date of which they were appointed along with all consequential benefits.

11. There is thus no dispute that the controversy in this petition is covered by the aforesaid Division Bench judgement.

12. In the result, we hold that the impugned order dated 2nd April 2004 is unsustainable and deserves to be quashed and set aside. We proceed to quash and set aside the said order and direct the respondent no.3 to grant approval to the petitioner's services as an Assistant Teacher in respondent no.2 school from the academic year June 1999 - 2000 onwards. We further direct respondents 1 and 2 to implement the order dated 13th February 2004 passed by respondent no.4 and pay arrears of salary as per the pay scale prescribed under MEPS Act and Rules. Rule is made absolute in the above terms. We grant three months time to respondents to comply with the

aforesaid order and direction. No order as to costs.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)